

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	CR No. 09-49-01WES
	:	CR No. 09-66-02WES
ROBERT BEAUPARLANT, JR.	:	

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

These matters have been referred to me pursuant to 28 U.S.C. § 636(b)(1)(B) and 18 U.S.C. § 3401(i) for proposed findings of fact concerning whether Defendant Robert Beauparlant, Jr., is in violation of the terms of his supervised release and, if so, for recommended disposition. In compliance with that directive and in accordance with 18 U.S.C. § 3583(e) and Fed. R. Crim. P. 32.1, a hearing was conducted on September 28, 2022, at which Defendant waived a revocation hearing. He admitted Violation Nos. 1-3 in full; admitted Violation No. 4 in full, except to the extent that Probation's report states that he committed no-contact-order violations; and made limited admissions to the no-contact-order violations that are part of the foundation of Violation No. 4 and alleged by Violation No. 5. I ordered that Defendant be detained.

Based on Defendant's admissions and the following analysis, I recommend that the Court impose a sentence of nine months of incarceration, followed by a fifty-one-month term of supervised release. While on supervised release, I recommend that Defendant be required to comply with the following conditions:

The defendant shall participate in a program of substance abuse treatment (inpatient or outpatient), as directed and approved by the Probation Office.

The defendant shall participate in a program of substance abuse testing (up to 72 drug tests per year) as directed and approved by the Probation Office.

The defendant shall participate in a program of mental health treatment as directed and approved by the Probation Office.

The defendant shall contribute to the cost of all ordered treatment and testing based on ability to pay as determined by the probation officer.

The defendant shall spend the first 3 months of supervised release on Home Detention with GPS monitoring and will be restricted to his residence every day. Exceptions to home detention: employment, education, religious services, medical treatment, substance abuse or mental health treatment, attorney visits, court appearances, court-ordered obligations or other activities as pre-approved by the officer. The defendant shall pay all or part of the cost of monitoring based on ability to pay as determined by the probation officer.

I. BACKGROUND

On September 27, 2022, the Court granted the Probation Office's petition for the issuance of a warrant charging Defendant with the following violations:

Violation No. 1: The defendant shall not commit another federal, state, or local crime.

On June 16, 2022, Mr. Beuparlant committed the offense of Domestic Violence –Disorderly Conduct (61-2022-05661) as evidenced by his nolo plea on July 15, 2022.

Violation No. 2: The defendant shall not commit another federal, state, or local crime.

On July 8, 2022, Mr. Beuparlant committed the offense of Providing False Information to 9-1-1 (61-2022-06357) as evidenced by his nolo plea on July 15, 2022.

Violation No. 3: The defendant shall not commit another federal, state, or local crime.

On July 22, 2022, Mr. Beuparlant committed the offense of Domestic Violence – Criminal Violation of a No Contact Order (61-2022-06886) as evidenced by his nolo plea on that date.

Violation No. 4: The defendant shall reside at a Residential Re-entry Center, preferably the Houston House in Pawtucket, Rhode Island, for a period of up to 6 months or until such time as a release plan can be approved by the Probation Office. While at said facility, the defendant shall comply with all the policies, procedures, and regulations therein.

On September 25, 2022, Mr. Beauparlant absconded from the Houston House.

Violation No. 5: The defendant shall not commit another federal, state, or local crime.

Mr. Beauparlant committed the offense of Violation of a No Contact Order as evidenced by incident reports received from the Houston House and admission to Officer Dufresne on September 26, 2022.

Defendant surrendered and appeared before the Court on September 28, 2022. He waived his right to a revocation hearing and admitted Violation Nos. 1-3 in full, admitted absconding as alleged in Violation No. 4 and made limited admissions to Violation No. 5 and the portions of Violation No. 4 referencing no-contact-order violations. Specifically, he admitted that the government had evidence sufficient to prove the no-contact-order violations by a preponderance of the evidence. Based on his admissions, I found Defendant guilty of violating the terms and conditions of his supervised release.

II. APPLICABLE LAW

Title 18 U.S.C. § 3583(e)(3) provides that the Court may revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on post-release supervision, if the Court finds by a preponderance of evidence that the defendant has violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be sentenced to a term beyond five years if the instant offense was a Class A felony, three years for a Class B felony, two years for a Class C or D felony, or one year for a Class E felony or a misdemeanor.

In this case, Defendant was on supervision for a Class A felony; therefore, he may not be required to serve more than five years imprisonment upon revocation.

Title 18 U.S.C. § 3583(e)(2) provides that if the Court finds that the defendant violated a condition of supervised release, the Court may extend the term of supervised release if less than the maximum term was previously imposed. In this case, the maximum term of supervised release is five years, but was previously imposed at sentencing; therefore, the term cannot be extended.

Title 18 U.S.C. § 3583(h) and § 7B1.3(g)(2) of the United States Sentencing Guidelines (“USSG”) provide that when a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized, the Court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. In this case, the authorized statutory maximum term of supervised release is five years. The Court may impose the above-noted statutory maximum, minus the term of imprisonment that is to be imposed for this revocation.

Section 7B1.1 of the USSG provides for three grades of violations (A, B and C). Subsection (b) states that where there is more than one violation, or the violation includes more than one offense, the grade of violation is determined by the violation having the most serious grade.

Section 7B1.1(a) of the USSG provides that a Grade A violation constitutes conduct that is punishable by a term of imprisonment exceeding one year, and that (i) is a crime of violence,

(ii) is a controlled substance offense, or (iii) involves possession of a firearm or destructive device, or any other offense punishable by a term of imprisonment exceeding twenty years. Grade B violations are conduct constituting any other offense punishable by a term of imprisonment exceeding one year. Grade C violations are conduct constituting an offense punishable by a term of imprisonment of one year or less; or a violation of any other condition of supervision. Section 7B1.3(a)(1) states that upon a finding of a Grade A or B violation, the Court shall revoke supervision. Subsection (a)(2) states that upon a finding of a Grade C violation, the Court may revoke, extend or modify the conditions of supervision. In this case, Defendant has committed Grade C violations; therefore, the Court may revoke, extend or modify the conditions of supervision.

Should the Court find that the defendant has committed a Grade B or C violation, § 7B1.3(c)(1) states that where the minimum term of imprisonment determined under § 7B1.4 is at least one month, but not more than six months, the minimum term may be satisfied by (a) a sentence of imprisonment; or (b) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e) for any portion of the minimum term. Should the Court find that the defendant has committed a Grade B or C violation, § 7B1.3(c)(2) states that where the minimum term of imprisonment determined under § 7B1.4 is more than six months but not more than ten months, the minimum term may be satisfied by (a) a sentence of imprisonment; or (b) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in § 5C1.1(e), provided that at least one half of the minimum term is satisfied by imprisonment. The second provision, which allows for alternatives for any portion of the minimum term, applies to this matter.

Pursuant to § 7B1.3(d), any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with the sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to be paid or served in addition to the sanction determined under § 7B1.4 (Term of Imprisonment), and any such unserved period of confinement or detention may be converted to an equivalent period of imprisonment. In this case, there are five months and five days outstanding at the Houston House Residential Re-entry Center.

Section 7B1.4(a) of the USSG provides that the Criminal History Category is the category applicable at the time the defendant was originally sentenced. In this instance, Defendant had a Criminal History Category of VI at the time of sentencing.

Should the Court revoke supervised release, the Revocation Table provided for in § 7B1.4(a) provides the applicable imprisonment range. In this case, Defendant committed Grade C violations and has a Criminal History Category of VI. Therefore, the applicable range of imprisonment for this violation is eight to fourteen months.

Section 7B1.5(b) of the USSG provides that, upon revocation of supervised release, no credit shall be given toward any term of imprisonment ordered, for time previously served on post-release supervision.

III. ANALYSIS

On February 11, 2011, Defendant resolved these two cases by pleading guilty to being a felon in possession of a firearm, conspiracy to commit and the commission of Hobbs Act robbery/marijuana, use of a firearm in furtherance of a crime of violence and conspiracy/possession with intent to distribute marijuana. He was sentenced to a total of 180 months of imprisonment followed by five years of supervised release. Supervised release

commenced on April 22, 2022, with a projected expiration on April 21, 2027. Less than two months after starting supervision (on June 16, 2022), he began the crime spree that underlies this violation proceeding.

On that day, Defendant was arrested and charged with domestic violence – disorderly conduct (Violation No. 1) after his girlfriend asked him to leave the residence but he returned and attempted to make entry into the home causing her to retreat to a locked car until law enforcement arrived. Defendant pled nolo contendere, was placed on probation for six months, and ordered to stay away from the victim.

Next, on July 8, 2022, Defendant was arrested for providing false information to 9-1-1 (Violation No. 2). As reflected in the police report, Defendant first called 9-1-1 to request that a well-being check on the same girlfriend who had been the victim of the prior charge, falsely stating that she had been depressed and was not responding to calls; when asked to identify himself, he hung up. Defendant then called the Burrillville Police Department directly and repeated the same request for the same fabricated reason; this time he gave a false name. Again, Defendant pled nolo contendere; he was placed on probation for one year.

Third, on July 22, 2022, Defendant committed the offense of domestic violence – criminal violation of a no contact order (Violation No. 3) when he showed up intoxicated after midnight at the residence where the same victim was staying; he tried to speak with her through a window despite her asking him to leave. After the police were called, Defendant absconded. Defendant was arrested and charged with violating the no contact order. Again, he pled nolo contendere; he was placed on probation for one year and again ordered not to have contact with the victim.

Based on these criminal cases, Defendant was held by the State as a probation violator and sentenced to thirty days of incarceration. Also based on this conduct, Defendant agreed to the modification of his federal conditions by adding the condition of six months at the Houston House to get him back on track and provide stability upon his release from state custody. Based on the modification, Defendant was released by the State on August 21, 2022, and placed at the Houston House on September 1, 2022. After less than a month (on September 25, 2022), the Houston House staff informed Probation that Defendant had absconded following a search of his cell phone that revealed he was again having contact with the same victim (Violation No. 4). The disturbing text messages that were found on Defendant's cell phone, Defendant's admission to Houston House staff that he had been speaking to the victim and Defendant's admission to Probation that he had been texting and speaking to the victim constitute the evidence of Violation No. 5.¹

In light of Defendant's admissions (as described *supra*) to this troubling conduct, and mindful of his failure to sustain employment,² lies to Houston House staff and disregard of the assistance offered by Probation to keep him out of jail through placement at the Houston House, the government requested that I recommend a severe incarcerative sentence of twelve months, which is near the top of the applicable guidelines range. Such a sentence is based on the need to keep the community safe³ and deter Defendant's dangerous conduct, as well as to sanction Defendant's serious breach of trust. Based on an incarcerative sentence of a year, the

¹ Defendant has not, as of this writing, been charged by the State with violating the no contact order based on this conduct. However, he remains in jeopardy.

² Despite assistance from Probation, during his brief period of supervision, Defendant had been fired from three jobs and was about to start a fourth.

³ Defendant's conduct not only put the victim at risk, but also endangered the community by diverting community resources from other emergencies. The government represented that during one of Defendant's criminal contacts with the victim, the local police were overwhelmed and had to call on another town to respond.

government also recommended the imposition of a maximum term of supervised release (forty-eight months) with the conditions recommended by Probation.

Defendant urged the Court to impose a sentence of five months incarceration in recognition of his surrender and acceptance of responsibility for the conduct, to be followed by the maximum supervised release term (fifty-five months). He argued that he has spent the last decade in prison and sorely needs mental health treatment,⁴ which had not yet begun when he was incarcerated based on the criminal conduct described above. Defendant acknowledged that he now understands that he should have prioritized treatment and failed to do so. He asked the Court to consider that he has already spent thirty days in jail as punishment for some of the underlying conduct and may face further State consequences. On allocution, Defendant apologized for his conduct and stated that he knows he needs mental health treatment, particularly after spending so much time in prison that it has affected his mental health. He explained that some of his failures to respond to supervision were caused by the transportation and scheduling issues he faced upon release.

Based on the foregoing, I find that Defendant's breach of the Court's trust requires a serious consequence. In addition, I find that the Court should impose a sentence that is sufficient to address both the protection of the community from Defendant's criminal conduct, as well as to deter Defendant from continuing this conduct. Nevertheless, I conclude that twelve months is overly harsh in light of Defendant's obvious challenge in functioning in the community after a long period of incarceration. Therefore, I recommend that the Court impose an incarcerative sentence of nine months, which is near the bottom of the guidelines range. Consistent with the

⁴ Probation referred Defendant for mental health treatment, but he failed to attend.

parties' agreement and Probation's recommendation, I further recommend that the Court impose a fifty-one-month term of supervised release with the conditions proposed by Probation.

IV. CONCLUSION

After considering the appropriate factors set forth in 18 U.S.C. § 3553(a) and for the reasons expressed above, I recommend that the Court impose a sentence of nine months of incarceration, followed by a fifty-one-month term of supervised release. While on supervised release, I recommend that Defendant be required to comply with the following conditions:

The defendant shall participate in a program of substance abuse treatment (inpatient or outpatient), as directed and approved by the Probation Office.

The defendant shall participate in a program of substance abuse testing (up to 72 drug tests per year) as directed and approved by the Probation Office.

The defendant shall participate in a program of mental health treatment as directed and approved by the Probation Office.

The defendant shall contribute to the cost of all ordered treatment and testing based on ability to pay as determined by the probation officer.

The defendant shall spend the first 3 months of supervised release on Home Detention with GPS monitoring and will be restricted to his residence every day. Exceptions to home detention: employment, education, religious services, medical treatment, substance abuse or mental health treatment, attorney visits, court appearances, court-ordered obligations or other activities as pre-approved by the officer. The defendant shall pay all or part of the cost of monitoring based on ability to pay as determined by the probation officer.

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Crim. P. 59(b); DRI LR Cr 57.2(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
October 4, 2022